IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21498 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	No
5	Whether it is to be circulated to the civil judge ?	No

==========

VIJAYBHAI RAMESHBHAI DEVIPUJAK - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

==========

Appearance :

MS SUBHADRA G PATEL for Petitioner(s) : 1,
MR. L.R. PUJARI, AGP, for respondents.

==========

CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 20/12/2005

ORAL JUDGMENT

1. Vijaybhai Rameshbhai Devipujak, petitioner, has filed this petition challenging the detention order dated 2.10.2005 passed by the Commissioner of Police, Surat

City, Surat, under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as “PASA Act”). The petition has been filed on 20.10.2005 and this Court has issued Rule on 24.10.2005 returnable after four weeks. On behalf of the respondents Mr. L.R. Pujari, learned APP, appears and he has filed affidavit. With the consent of parties, the matter has been taken up for final hearing today.

2. Ms. Patel, learned advocate, has invited my attention to the order of detention passed by the Police Commissioner, Surat City, Surat under PASA Act. She has also invited my attention to the order passed by the Police Commissioner on 2.10.2005 by which the petitioner-detenu has been sent to Central Jail, Vadodara. She has also invited my attention to the grounds furnished by the authority. All the grounds reveal that the petitioner has committed three offences under the provisions of Section 379 read with Section 114 of the Indian Penal Code. Two offences have been committed on 24.7.2005 and the third offence has been committed on 26.7.2005. In this case the petitioner has committed theft of mobile phones of Nokia Company worth Rs. 5000/- and Rs. 4000/- respectively on 24.7.2005. He has committed theft of mobile phone of

Nokia Company valued at Rs. 2500/-.

3. It was also stated that the petitioner is a dangerous person. The learned counsel for the petitioner has submitted that the petitioner-detenu cannot be called a dangerous person. She has relied on the judgement of the Hon'ble Supreme Court in the case of Mustakmiya Jabbarmiya Shaikh Vs. M.M. Mehta, Commissioner of Police reported in 1995(2) GLR 1268 (SC) and Piyush Kantilal Vs. Commissioner of Police, Ahmedabad City & Another reported in AIR 1989 SC 491 and also a Division Bench judgement of this Court in the case of A.J. Solanki Vs. Police Commissioner, Surat reported in 2000(1) GLH 393.

4. On behalf of the respondents Mr. L.R. Pujari, learned APP, appears. He has tried to defend the order of the authority. He has relied on the affidavit in reply filed by Sudhir Sinha, Commissioner of Police for the city of Surat. In the said affidavit it is stated that the case of the petitioner-detenu falls within the definition of “dangerous person” as defined in Section 2(c) of the PASA Act and therefore the authority has carefully considered the facts and circumstances of the case and the order of detention is required to be upheld.

5. Having heard the learned counsel for the parties and perused the rcords of the case, I am of the considered view that there being no credible or cogent material about the detenu involved in such activities. On consideration of the factual and legal aspects emerge from the record of the petition and the considering the rival submission, these facts are clearly covered by the judgement of the Hon'ble Supreme Court in the case of PIYUSH KANTILAL VS. COMMISSIONER OF POLICE, AHMEDABAD CITY & ANOTHER reported in AIR 1989 SC 491 and also the decision of this Court in the case of A.J. SOLANKI VS. POLICE COMMISSIONER, SURAT reported in 2000(1) G.L.H. 393. Therefore, this Court accept the contention of the learned counsel for the petitioner that there is no breach of public order. There may be any breach of law and order and therefore the order of detention cannot be sustained and deserves to be quashed and set aside.

6. It may be noted that co-detenu has also filed petition being Special Civil Application No. 20876 of 2005 and this Court has allowed the petition vide order dated 16.12.2005.

7. In the result, the petition is allowed. The order of detention dated 2.10.2005 is quashed and set aside. The detenu Vijaybhai Rameshbhai Devipujak is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(K.M. MEHTA, J)

(pkn)